

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

JUL 19 1996

In the Matter of

Annual Assessment of the Status
of Competition in the Market for
the Delivery of Video Programming

CS Docket No. 96-133

DOCKET FILE COPY ORIGINAL

COMMENTS OF BARTHOLDI CABLE COMPANY, INC.

Bartholdi Cable Company, Inc. ("Bartholdi"), by its attorneys, hereby submits these Comments in response to the Commission's Notice of Inquiry in the above-referenced proceeding. Bartholdi has participated in the Commission's previous proceedings on the status of competition in the video marketplace.^{1/} In the 1994 and 1995 Comments, Bartholdi described the anticompetitive behavior undertaken by Time Warner and asserted that there was no significant competition in the video marketplace.

Today, little has changed; Time Warner's anticompetitive conduct continues unabated. In response to this conduct, Bartholdi filed a complaint (copy attached) against Time Warner in the United States District Court for the Eastern District of New York alleging that Time Warner violated federal and state antitrust and false advertising laws. Specifically, the complaint documents the

^{1/} Bartholdi, formerly Liberty Cable Company, Inc. ("Liberty"), filed Comments and Reply Comments with the Commission in both 1994 and 1995 in response to the Commission's Notices of Inquiry on the status of competition in the video marketplace. See Comments of Liberty, CS Docket 94-48, dated June 29, 1994; Reply Comments of Liberty, CS Docket 94-48, dated July 29, 1994; Comments of Liberty, CS Docket 95-61, dated June 30, 1995; Reply Comments of Liberty, CS Docket 95-61, dated July 28, 1995 (collectively "1994 and 1995 Comments").

0+9

anticompetitive conduct of Time Warner, including the following:
(1) denying Bartholdi access to programming; (2) offering bulk discounts only to buildings negotiating with or being served by Bartholdi; (3) disseminating intentionally false information about Bartholdi; and (4) preventing Bartholdi from accessing wiring and other equipment necessary to provide video service to subscribers.

The complaint vividly demonstrates that there is no meaningful competition in the New York City video marketplace.

Respectfully submitted,

BARTHOLDI CABLE COMPANY, INC.

By: 

Henry M. Rivera

Jay S. Newman

M. Tamber Christian

GINSBURG, FELDMAN & BRESS, CHTD.

1250 Connecticut Avenue, NW

Suite 800

Washington, DC 20036

202-637-9000

Its Attorneys

Dated: July 19, 1996

g:\hr\039\024\bartcom.pld

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

-----X
BARTHOLDI CABLE COMPANY, INC., formerly
known as LIBERTY CABLE COMPANY, INC.
and LVE, L.L.C.

CV 96 CIV No. **2687**

Plaintiffs,

-against-

COMPLAINT AND
JURY DEMAND

TIME WARNER, INC., WARNER ENTERTAINMENT,
L.P., TIME WARNER CABLE OF NEW YORK CITY,
AMERICAN TELEVISION AND COMMUNICATIONS
CORPORATION, TIME WARNER CABLE, INC.,
TIME WARNER CABLE GROUP, PARAGON
COMMUNICATIONS, doing business as PARAGON
CABLE MANHATTAN, QUEENS INNER UNITY
CABLE SYSTEM, INC., BROOKLYN-QUEENS
CABLE COMPANY and GERALD LEVIN,

Defendants.

WEINSTEIN, L.
LEVY

-----X
Plaintiffs Bartholdi Cable Company, Inc., formerly known as Liberty Cable Company,
Inc. and Liberty Interactive Video Enterprises, Inc., doing business as LVE, hereinafter
individually and collectively referred to as "Liberty," by their attorneys allege for their complaint
against Time Warner Cable of New York and its corporate parents, affiliates and predecessors
("Time Warner"), upon knowledge with respect to their own acts, and upon information and
belief with respect to all other matters as follows:

I

INTRODUCTION

1. For more than 25 years, Time Warner has maintained and abused its position as a
monopoly distributor of multichannel video programming in the most important media markets
in the world, the boroughs of New York City.

2. In 1985 Liberty was formed by a group of New Yorkers who build, own and operate as entrepreneurs residential apartment buildings as well as hotels and commercial properties. These entrepreneurs refused to accept a "take it or leave it" offer of inferior Time Warner video service for their own buildings, at extortionate monopoly prices.

3. In 1992, after having pioneered a new and advanced method to distribute multichannel video by microwave, and having secured the first FCC license to do so, Liberty was capable of serving virtually every multiple dwelling, hotel and office building in Manhattan, Queens and other areas in the New York City metropolitan area ("metropolitan area").

4. For the next four years, that is from early 1992, Liberty, supported by a massive advertising campaign and substantial capital resources, offered New Yorkers multichannel video service at prices half those typically charged by Defendants. Liberty's system was more reliable, and its service operation far superior to Time Warner's notoriously poor and unresponsive installation, service and repair program.

5. According to the laws of economics and business, Liberty should have secured a sizable share of the markets in which Time Warner and Liberty were the only competitors. And indeed by February 1996 when Congress enacted the 1996 Telecommunications Act, Liberty served some 26,500 subscribers in approximately 200 residential and commercial buildings in Manhattan, Queens, The Bronx and New Jersey

6. These buildings included many of the most important and prestigious residential and commercial properties, including the World Trade Center, 25 Sutton Place, the Four Seasons Hotel, Lincoln Towers, Wavecrest Gardens in Queens, 555 Park Avenue, the Parker Meridien Hotel, One New York Plaza, the Grand Hyatt Hotel, the General Motors Building and the

landmark Majestic cooperative apartments in Manhattan With all this, Liberty's market share stood at approximately 3% to Time Warner's share of approximately 97%.

7. Liberty, despite its superior prices, service and technology, was limited to this small share of the market as a result of an unrelenting campaign of predation, exclusion, anticompetitive acts and dirty tricks by Time Warner and its co-conspirators.

8. Liberty, while an upstart, had the resources to compete and succeed in a fair contest. But the playing field was not level because of numerous clear and persistent violations of the antitrust laws.

- Time Warner illegally denied Liberty access to programming.
- Time Warner damaged and destroyed Liberty's equipment.
- Time Warner paid commercial bribes to building employees.
- Time Warner priced and sold its video services in an exclusionary, predatory and discriminatory manner.
- Time Warner interfered with Liberty's advertising campaign.
- Time Warner paid building owners premiums in return for their denying tenants a choice of video service.
- Time Warner harassed and physically intimidated Liberty technicians.
- Time Warner widely disseminated intentionally false claims and advertising about Liberty.
- Time Warner manipulated access to building wiring and conduit which it claimed to control.

- Time Warner persistently waged a campaign of “dirty tricks” and threats against Liberty subscribers, designed to punish these subscribers for doing business with Liberty and to intimidate potential Liberty customers.

9. Time Warner has preyed in all these ways, while further rigging the contest of competition by stealing much of the electricity it uses to power its technically inferior systems.

10. This unparalleled anticompetitive campaign, directed and orchestrated by officers at the highest level of Time Warner, victimized both Liberty and the hundreds of thousands of New Yorkers who today would otherwise be enjoying superior multichannel video service at prices much lower than those charged by Time Warner.

11. In this action Liberty alleges that Time Warner’s campaign of predation violated Sections 1 and 2 of the Sherman Act, the Lanham Act, as well as analogous provisions of New York’s antitrust, consumer protection and false advertising laws.

12. Liberty seeks declaratory relief and damages ~~which~~ prior to trebling are currently estimated to be at least \$350 million dollars, to redress these violations of federal and state antitrust and fair competition law.

II

JURISDICTION AND VENUE

13. This complaint is filed under Section 4 of the Clayton Act (15 U.S.C. § 15) for damages resulting from defendants violations of Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1 and 2) and of the Lanham Act (15 U.S.C. § 1125). This Court has jurisdiction of the federal antitrust and false advertising claims alleged herein under 28 U.S.C. §§ 1331 and 1337. Jurisdiction of the state antitrust law and false advertising claims alleged herein is vested in this

Court pursuant to the principles of pendent jurisdiction, in that they arise out of the same operative facts as the federal claims.

14. The corporations named as defendants transact business, reside or are found in this District. Venue in this District is proper under 28 U.S.C. § 1391 and 15 U.S.C. §§ 15, 22, and 26. The interstate trade and commerce involved and affected by the alleged violations of the antitrust and fair competition laws was and is carried on in part within this District. The acts complained of have had substantial anticompetitive effects in this District and the claims arose, in part, in this District.

III

DEFINITIONS

15. As used in this complaint, the following terms are defined as:

A. "Cable TV" service means the transmission to end-users ("subscribers and customers") of multiple channels of non-broadcast video programming and retransmitted broadcast programming via closed transmission paths or hardwire (generally coaxial or fiber optical cable) which traverses public property and/or public rights-of-way.

B. "SMATV" means satellite master antenna television.

C. "MMDS" means multipoint multichannel distribution system.

D. "DBS" means direct broadcast satellite.

E. "Non-broadcast TV" means television programming and television programming services, such as *HBO* and *CNN* which are delivered to subscribers by Cable TV, SMATV, MMDS, DBS and other delivery mechanisms, and which are not available to television viewers by "over-the-air" broadcast.

F. "MVPD" means multichannel video programming distributor. Operators of Cable TV systems such as Time Warner, SMATV systems such as Liberty, DBS systems such as *Direct TV*, MMDS and other non-broadcast delivery mechanisms are MVPDs.

G. "MSO" means a multiple system operator, i.e., of multiple Cable TV systems. Time Warner is the second largest MSO in the United States. Co-conspirator TCI is the largest MSO in the United States.

H. "VCR" means video cassette recorder.

I. "TV" means television.

J. "DOITT" means the New York City Department of Information Technology and Telecommunications. DOITT was formerly called the Department of Telecommunications and Energy ("DTE"). DOITT administers the franchise relationship between New York City and Time Warner's Cable TV systems in Manhattan and Queens.

K. "Converter" means a boxlike device ~~ne~~cessary for the reception of certain MVPD services. The converter is connected to the subscriber's TV and/or VCR and decodes or "unscrambles" video signals that are encrypted or encoded ("scrambled") by an MVPD or non-broadcast programmer so as to prevent the unauthorized reception of programming.

L. "Tier" means a level of video service provided to subscribers by MVPDs such as Time Warner and Liberty. The "basic" or "standard" tier of service generally contains all of the broadcast channels which a subscriber would receive over-the-air (in the metropolitan area Channels 2, 4, 5, 7, 9, 11 and 13) as well as additional channels (networks), such as the *Cable News Network* ("CNN") and the *Entertainment and Sports Network* ("ESPN"). An MVPD may provide one or more channels in its basic tier which another MVPD will not offer in any tier of service, or only as a premium channel for an additional monthly charge.

M. "MATV" means master antenna television, generally a system involving an antenna situated on the roof of a building designed to receive over-the-air broadcast television and then "feed" the signals to individual tenants/residents of the building.

N. "Pay-Per-View" means a service offered by MVPDs whereby subscribers can order and pay for a particular program such as a sports event, movie or concert.

O. "Cable ready" refers to the design feature of televisions and VCRs which will allow the owner/viewer to receive non-broadcast cable television programming, which has not been encrypted, encoded or scrambled, without use of a converter.

P. "Headend" is a facility that receives television signals from satellites, microwave or off-air transmitters and then processes those signals for distribution by coaxial cable to subscribers.

IV

THE PARTIES

16. Defendant Time Warner, Inc. is a Delaware Corporation with its principal place of business in New York City. It is the owner of defendant Time Warner Entertainment, L.P. along with U.S. West, Inc., Itochu Corporation and Toshiba Corporation.

17. Defendant Time Warner Cable Group is a division of defendant Time Warner, Inc. and the immediate parent entity of defendant Time Warner Cable, Inc., a Delaware corporation with its principal place of business in Stamford, Connecticut.

18. Defendant Paragon Communications, doing business as Paragon Cable Manhattan was a joint venture of defendant Time Warner Entertainment, L.P. and Houston Industries until 1995, when Time Warner purchased Houston Industries' share of the partnership. The

franchised cable television system in Manhattan, formerly operated under the name Paragon, is now operated under the name Time Warner Cable of New York City.

19. Time Warner Cable, Inc., is the immediate parent of both defendant American Television and Communications, Corporation, a Delaware Corporation with its principal place of business in Stamford, Connecticut and Time Warner Cable of New York City, a Delaware Corporation with its principal place of business in New York City. Time Warner Cable of New York City is the successor of Manhattan Cable Television, the monopoly Cable TV franchise in parts of Manhattan.

20. Defendant Queens Inner Unity Cable System, Inc. ("QUICS") is a New York corporation with its principal place of business in Jamaica, New York. QUICS and defendant Brooklyn-Queens Cable Company are both owned and operated by Time Warner. Time Warner's franchised Cable TV systems in Queens have at various times been operated under the names of QUICS, Brooklyn-Queens Cable Company and ~~Time~~ Warner Cable of New York City.

21. Defendant Gerald Levin is the Chief Executive Officer and Chairman of the Board of Directors of Defendant Time Warner, Inc.

22. Plaintiff Bartholdi Cable Company, Inc. ("Bartholdi"), formerly known as Liberty Cable Company, Inc., is a New York corporation with its principal place of business in New York City. Plaintiff LVE, L.L.C., a New York limited liability corporation, is the marketing arm of Bartholdi and Freedom, L.L.C. which purchased the majority ownership of certain assets of Liberty Cable Company, Inc., excluding F.C.C. licenses and related transmission facilities, on March 8, 1996 (hereinafter the "sale of Liberty"). Freedom, L.L.C. is not a party to this action.

CO-CONSPIRATORS

23. Various persons, firms, corporations, organizations and business entities, both known and presently unknown to the plaintiffs, including a former official of the New York City Department of Telecommunications and Energy, now known as "DOITT" acting in derogation and in excess of his authority, several members of a New York City law firm and several members of a New York City financial consulting firm have participated as co-conspirators in the violations of antitrust law alleged and have made statements and performed acts in furtherance of the conspiracies.

24. Turner Broadcasting System, Inc. ("Turner") a Georgia corporation with its principal place of business in Atlanta, Georgia is a co-conspirator.

25. R.E. Turner ("Ted Turner") is the Chairman of the Board of Directors and President of Turner. Ted Turner is a co-conspirator.

26. Tele-Communications, Inc. ("TCI"), a Delaware corporation with its principal place of business in Englewood, Colorado is a co-conspirator.

27. Cablevision Systems Corporation ("Cablevision"), a New York corporation with its principal place of business in Woodbury, New York is a co-conspirator.

28. Metropolitan Life Insurance Company ("Met Life"), a New York corporation with its principal place of business in New York City is a co-conspirator.

VI

TRADE AND COMMERCE

29. The activities of the defendants and their co-conspirators which are the subject of this complaint were and are within the flow of, and substantially affect interstate commerce. Through its subsidiaries, affiliates and related entities, Time Warner produces programming such as *Home Box Office* ("HBO") for non-broadcast television. Time Warner transmits such programming by satellite and other methods to cable television systems in all 50 United States. These cable television systems include the Queens Inner Unity Cable System, Brooklyn-Queens Cable Company and Time Warner Cable of New York City, the franchised cable television systems in Queens and Manhattan, which were and are all operated by Time Warner and are either wholly or partially owned by Time Warner.

30. Liberty receives non-broadcast video programming transmitted by Time Warner and other programmers via interstate satellite transmission at its satellite reception facilities in New York City and thereafter distributes the programs to subscribers in New York and New Jersey by microwave transmission.

VII

STATUTORY FRAMEWORK GERMANE TO THIS COMPLAINT

31. The Communications Act of 1934, as amended, 47 U.S.C. § 151 et seq. (the "Communications Act"), established the national regulatory scheme for television broadcasting. By statute and Supreme Court precedent, this power to regulate television has been extended to encompass MVPDs such as the operators of Cable TV, SMATV, MMDS and DBS systems. The Telecommunications Acts of 1984, 1992 and 1996, which are amendments to the Communications Act, principally deal with MVPDs, the interrelationship between broadcast and

non-broadcast television and the extent to which certain forms of multichannel video programming distribution are subject to federal and/or state regulation.

32. The Communications Act defines "effective competition" in reference to Cable TV systems, 47 U.S.C. § 543(l)(1). Under the statutory definition, Time Warner's franchised Cable TV Systems in Manhattan and Queens have not been subject to "effective competition" during most of the events detailed in this complaint.

33. Prior to the 1996 amendments to the Communications Act, a combination of numerous state laws and so-called federal cross-ownership restrictions, such as 47 U.S.C. § 533(b)(1), (barring cross ownership of franchised Cable TV and local telephone exchange common carrier systems in same market) effectively barred Time Warner from competing with regional telephone companies in markets where it owned franchised Cable TV systems, such as Manhattan and Queens. Therefore to attempt effective competition with Time Warner's Cable TV Service, all an MVPD, such as Liberty, needed to offer ~~was~~ video service. The 1996 Act preempted many of the restrictive state statutes (1996 Act, § 253) and loosened or repealed many of the cross ownership restrictions of the Communications Act. Time Warner will now enter the local telephone markets. Therefore to attempt effective competition with Time Warner, a competitor should now be prepared to offer an integrated video and telephone service, as Time Warner will.

34. Accordingly, on March 8, 1996, within a month of the passage of the 1996 Act, a majority interest in Liberty was sold to affiliates of Peter Kiewit Sons, Inc., a large national construction and telecommunications firm whose shareholders control, own and/or operate both telephone and video systems.

35. The sale price for Liberty was determined by the number of Liberty subscribers at the time of sale. This is the standard industry calculation for the sale of a Cable TV system or other MVPD. The price per subscriber in the sale was well in excess of \$2,500, compared to an industry average of roughly \$2000, in recognition of the significant additional value of obtaining a competitive toehold in New York City, which encompasses the most important media markets in the world.

VIII

FACTUAL ALLEGATIONS

36. Time Warner is self-described as the largest entertainment and media company in the world. Its diverse businesses include major book and periodical publishers, the Warner Bros. film studio, until recently Interscope Records Inc., the dominant purveyor of highly antisocial "Gangsta Rap" music, numerous non-broadcast television networks ("channels") such as *HBO*, *Cinemax* and *Court TV* and the second largest *MSO* in the United States, including all of the franchised cable systems in the New York City boroughs of Manhattan and Queens.

37. Time Warner owns approximately 22% of co-conspirator Turner, which in turn owns a major library of classic feature films (*MGM*), movie studios (*Castle Rock* and *New Line*) and numerous important non-broadcast networks such as the *Cable News Network* ("*CNN*"), *Turner Network Television* ("*TNT*"), *Turner Classic Movies* ("*TCM*"), the *Cartoon Network* and *TBS*, a television station which broadcasts over-the-air in the greater Atlanta area, but is also transmitted by satellite for non-broadcast delivery by MVPDs throughout the United States.

38. Turner is also partly owned by co-conspirator TCI, which owns the largest *MSO* in the United States. TCI also owns numerous non-broadcast networks such as *Encore*, *Starz* and the *Home Shopping Network* ("*HSN*"). Through a proposed merger which is currently being

investigated by the Federal Trade Commission ("FTC") as well as by the FCC and numerous state antitrust and telecommunications agencies. Time Warner would acquire Turner, and TCI would own a significant share of the merged entity. This merger, if permitted to proceed, would seriously exacerbate the market and monopoly power currently held and abused by each of these firms in numerous markets. It would also facilitate further abuse by these firms of their vertically integrated positions, as typified by the actions alleged in this complaint.

39. Time Warner and its affiliates and predecessor entities have been the only franchised Cable TV operators in Queens and Manhattan for more than 25 years and, until 1985, possessed virtually 100% of the MVPD markets.

40. Liberty was formed in 1985 in response to Time Warner's monopoly pricing and notorious record of poor service. That abysmal service record has continued to date and has spawned tens of thousands of consumer complaints to federal, state and New York City consumer protection and telecommunications agencies. It ~~has~~ forced Time Warner to enter into a "Social Contract" with the FCC in lieu of litigating thousands of separate rate complaints lodged against its Cable TV systems. Moreover, this infamous record of service was highlighted by Liberty in an extensive and relentless advertising campaign, forcing Time Warner to counter with a campaign telling customers that "we might surprise you" and promising free cable service if service calls were not responded to promptly.

41. Liberty's owners during the period of this complaint, *i.e.*, up to and including March 8, 1996, were and are New Yorkers who build, own, operate and manage numerous apartment buildings, hotels and commercial properties. Prior to 1985 these business people approached Manhattan Cable Television, the predecessor of Time Warner Cable of New York City, to negotiate a reasonable rate for multichannel video programming service for a hotel they

owned, the Ramada Milford Plaza. They were met with a “take it or leave it” offer at monopoly prices.

42. Rather than submit to monopoly extortion, the Milford Plaza’s owners installed their own video distribution system at the hotel and, in 1985, formed Liberty to deliver video service to the numerous buildings which they were then building.

43. Time Warner responded to this initial glimmer of competition by refusing to sell *HBO* and *Cinemax* to Liberty for several years. HBO was then, and is now, the dominant non-broadcast premium movie channel, exercising and abusing monopoly power in the markets for such premium services. It was only after several lawsuits by competing programmers such as Viacom, that Time Warner provided channel space on its numerous Cable TV systems to movie networks such as *Showtime*. Time Warner paid hundreds of millions of dollars to compensate its programming competitors for abusing its vertically integrated position as both owner of *HBO* and *Cinemax* and the monopolist in numerous MVPD markets.

44. In 1991 Liberty applied for and obtained the first license issued by the FCC to utilize the 18 Ghz frequency in the radio spectrum for transmission of video signals to end users. Under this method of program distribution, Liberty receives satellite signals on multiple receiving “dishes” at its satellite reception facilities and then retransmits these signals via 18 Ghz microwave to a single receiving dish on the roof of each building where Liberty’s customers are located. The video signal is then transmitted to individual customers within such buildings by coaxial cable. Liberty’s systems do not use any public property or rights-of-way to deliver video signals.

45. In contrast, while Time Warner also receives satellite signals at a headend facility in Manhattan, it then transmits the signal under miles of city streets by coaxial cable to its

subscribers. Signals thus transmitted over long stretches of coaxial cable must be amplified approximately every 200 feet along the path to a Time Warner subscriber. Each time the signal is amplified it suffers additional distortion. In contrast, the Liberty signal is typically so powerful that at various points the strength of the signal must actually be reduced.

46. In 1992 Liberty expanded its operations from serving as an MVPD for buildings affiliated with Liberty's owners and became a full competitor to Time Warner's monopoly systems in Manhattan and Queens.

47. Upon entering into full competition with Time Warner, Liberty possessed virtually every important lawful competitive advantage.

48. Liberty's technically superior transmission system delivered virtually the same number of channels as Time Warner.

49. Liberty could and did secure every major channel that Time Warner distributed with the exception of channels withheld from Liberty by Time Warner and by the co-conspirators, as detailed below.

50. Liberty immediately introduced a series of technical innovations well before they were deployed by Time Warner. In several instances, Time Warner has still not matched these innovations.

51. Liberty's basic video programming services can be received by any "cable ready" television set or VCR without the use of a converter. Pursuant to FCC regulations, all televisions and VCRs sold in the United States must be cable ready. These features are useless with Time Warner's system, which always requires the use of a "converter."

52. Since 1992, Time Warner has not matched this feature of Liberty's system. Time Warner charges subscribers for converters, which are necessary only because Time Warner

insists upon scrambling all of its signals. Moreover, as detailed below, Time Warner manipulates the procedures for return of their converters in one of its many gambits to deter its dissatisfied subscribers from switching to Liberty service.

53. In 1992, Liberty introduced an on screen identification feature which prominently displays the time and channel acronym (*e.g.*, *HBO*, *CNN*) each time the television set is turned on or the channel changed. Time Warner has never matched this feature.

54. Liberty introduced “pay-per-view” channels a year before Time Warner. This is particularly ironic, because as detailed below, Time Warner persistently disseminated printed matter intended to convey the impression that Liberty does not offer pay-per-view selections.

55. Since 1992 Liberty, at no additional charge, has offered every building it serves a “security channel” allowing subscribers to view and “screen” on their televisions, visitors seeking entrance to the building and/or their individual apartments/offices. Thereafter, Time Warner offered a similar feature for an additional charge, but only to buildings considering Liberty service.

56. Liberty’s converters, the first of which is provided without charge, are utilized only when subscribers order premium channels such as *HBO*. Liberty converters provided advanced fully “addressable” features well before Time Warner. This allowed the subscriber to add or drop a premium service without the need for a technician to visit the residence, a particularly onerous burden for Time Warner subscribers given Time Warner’s infamous record of tardy and missed service calls. Time Warner’s bad reputation is so legion that the battle between an Upper West Side Manhattan resident and a Time Warner service technician has been parodied for the entire world in a classic episode of the top rated *Seinfeld* show first broadcast by *NBC* on February 8, 1996

57. For more than a year, Liberty's basic tier of service has included *CNN International*, *Turner Classic Movies* ("TCM") and *Much Music*, three networks never offered by Time Warner.

58. Liberty has provided the *Bravo* film network and *SportsChannel* as part of its basic program tier since 1993. Time Warner charged premiums for those channels until 1995.

59. In 1993, Liberty introduced *United Nations TV* ("UNTV"), as part of its basic tier. UNTV is a "C-SPAN" format coverage of the United Nations, which is highly appealing to New York's vast international community. Time Warner introduced a much more limited version of this channel in 1995.

60. Liberty introduced the *Sci-Fi Channel* in its basic tier in 1993. Time Warner followed suit in 1995.

61. Liberty introduced the "full feed" version of *TV Japan* in 1993. Time Warner later followed with a truncated version of this service

62. Liberty introduced full service *Bloomberg Information TV* in 1993. Time Warner introduced a limited version of this network in 1994.

63. Liberty provided the "full feed" version of the TV Food network, while Time Warner carried only a partial version.

64. Liberty introduced *NBC Desktop*, a business oriented programming service, in 1995. Time Warner has never offered *Desktop*.

65. In 1995, Liberty introduced the *History Channel*. Time Warner responded in 1996.

66. In 1996, Liberty introduced the *Dow Jones Investor Network*, which Time Warner has never offered.

67. For several years, Liberty provided *WGN*, *KTLA*, and *WSBK* in its basic tier. These three “superstations” are similar to Turner’s *TBS*. They have never been offered by Time Warner.

68. In 1995, Liberty introduced *The Independent Film Channel* and *The Sundance Channel*, in its basic tier. Time Warner, not surprisingly, has refused to offer these channels, since they spotlight innovative lower budget movies which the sophisticated New York audience often prefers to the blockbuster fare produced by defendant’s Warner Bros. studio. Time Warner followed a similar path with *Bravo*, another alternative movie channel, by charging a premium for this service years after Liberty provided it in the basic tier.

69. Most important, during most of the relevant period, Liberty offered this superior technology, service and program choice in a basic tier price of \$12.00 - \$15.00, roughly half of Time Warner’s price for its inferior product. Moreover, as noted, Liberty’s basic tier service involved no converter and no monthly converter charge. Unlike Time Warner, Liberty did not make additional charges for additional TV sets receiving its video service. In higher tiers of service, involving premium channels, the price disparity between Liberty and Time Warner widened further. Liberty’s charges for such premium channels was lower, and unlike Time Warner, Liberty made no additional charges for premium channels on extra TV sets. In addition, as stated, Liberty provided networks such as *Bravo* and *SportsChannel* in basic; while Time Warner charged premiums.

70. Liberty, backed by substantial financial resources, widely publicized its significant price, service and technology advantages to a public infuriated with decades of Time Warner monopoly pricing and poor service. In addition to daily small ads on the bottom of the front page of the New York Times, Liberty waged an extensive advertising campaign in a variety

of local and national media. These included innovative and elaborate commercials on local broadcast stations and national non-broadcast networks. These ads ran until, as detailed below, Time Warner and its co-conspirators combined to eliminate these commercials.

71. Liberty has also consistently engaged in extensive print media advertising campaigns. These have included multiple page ads incorporating pre-franked business reply cards, which “wrapped around” the Sunday New York Times Television supplement, a publication with a circulation of well over one million. Liberty initially purchased the inside cover of The Times Television supplement with a business reply card affixed. Time Warner characteristically attempted to preempt this effort by booking this page every Sunday for at least the next year. At that point, Liberty and The Times staff jointly developed a new form of advertisement, to wrap around the outside cover of The Times Sunday TV supplement.

72. As a result of this constant advertising campaign and extensive news coverage by newspapers, magazines and television shows, both national and local, Liberty’s challenge to Time Warner was widely recognized in New York and throughout the United States.

73. Time Warner could not and would not respond to this competition in a fair and honestly industrial manner. Immediately it determined to suppress Liberty’s expansion and, if possible, totally oust Liberty from the market.

74. Time Warner did all this not only to protect its monopoly profits in the Manhattan and Queens MVPD markets, but in order to make a national example of Liberty, lest any other upstart alternative MVPD challenge the monopoly power Time Warner exercised in other MVPD markets around the country.

75. The primary motivation for the active participation of both TCI and Cablevision as co-conspirators, was to advance the objectives they shared with Time Warner. Both

Cablevision and TCI are also competitors of Liberty. Liberty competes with Cablevision's monopoly Cable TV franchises in The Bronx and areas within New Jersey. Liberty was also asked to submit proposals by a consortium of village officials in Nassau County, and separately by the Nassau County Town of Oyster Bay to bring competition to these areas also monopolized by Cablevision. This invitation was widely publicized. In or about January 1996, Cablevision responded to these invitations by dispatching a delegation to threaten Oyster Bay that if the town proceeded with Liberty, Cablevision would relocate its headquarters from Nassau to Suffolk County. Liberty's negotiations with these Nassau municipalities have now come to a standstill.

76. In 1994 Liberty secured a franchise in one Westchester town, where it would challenge TCI's monopoly position.

77. Time Warner, TCI and Cablevision also share the common objective of making a very public example of how nascent competition will be crushed through all means at their disposal. This would and did send a clear message to alternative MVPDs, such as Liberty, throughout the United States.

78. Liberty's challenge to Time Warner and its co-conspirators in the metropolitan area has been followed almost daily over the last four years in the numerous publications which focus on the MVPD industry, such as *MultiChannel News*. The battle has also been widely covered in publications with a broader readership, such as the *Wall Street Journal* and *The New York Times*.

79. The annual FCC report to Congress on the status of competition in the MVPD markets also chronicles this battle and sadly reports little if any other significant challenges to entrenched Cable TV monopolists.

80. Against this background, Time Warner, TCI and Cablevision conspired to destroy Liberty, lest other aggressive alternative MVPDs follow Liberty's example.

81. The methods and means adopted and carried out by Time Warner and its co-conspirators in this relentless campaign to retard, suppress and minimize the expansion of Liberty's subscriber base, reads like a "Handbook for Predators." This campaign, which continues unabated to date, was coordinated by a formal anti-Liberty task force which met regularly. When this task force became aware that a building was considering offering its residents Liberty service, it unleashed a torrent of predatory and exclusionary acts, as more fully detailed below. Repeated mailings containing false and disparaging information about Liberty were sent to each building resident. The buildings were threatened with legal action. Buildings were also threatened with the physical destruction of their wiring and/or MATV systems, which Time Warner falsely claimed to own. The buildings were simultaneously offered bribes and other inducements to keep Liberty out, such as the payment of legal fees and waiver of certain requirements of Time Warner's franchise agreement with New York City. Often an illegal bulk rate was then, and only then, offered to the building.

82. The predatory, exclusionary and anticompetitive activities included, but were not limited to, the categories discussed below.

83. Time Warner and co-conspirators illegally denied Liberty access to non-broadcast programming. Time Warner priced and sold its video services in an exclusionary, predatory and discriminatory manner. Time Warner paid premiums to building owners' in return for their depriving tenants of a choice between competing multichannel video services. Time Warner paid commercial bribes to building superintendents to steer business to Time Warner and away from Liberty. Time Warner damaged and destroyed Liberty equipment and harassed and

physically threatened Liberty technicians. Time Warner widely and persistently disseminated intentionally false claims and advertising about Liberty and interfered with Liberty's own advertising campaign. Time Warner manipulated access to building wiring and conduit which it controlled. Time Warner attempted to block the FCC approved NYNEX-Liberty Video Dial Tone trial because it threatened to inject future competition into these markets. Time Warner has persistently waged a campaign of "dirty tricks" and threats against Liberty subscribers, designed to intimidate potential Liberty customers.

Time Warner and Co-Conspirators Have
Denied Liberty Access To Programming

84. Time Warner and its co-conspirators have consistently attempted to deny Liberty important non-broadcast programming within their control. In conjunction with such denial of programming, Time Warner has mounted aggressive advertising campaigns highlighting the programming which it has withheld.

MSG

85. Immediately after Liberty obtained its 18 Ghz license from the FCC, in 1991, Time Warner attempted to prevent Liberty from offering the popular *Madison Square Garden Network* ("MSG") which broadcasts New York Yankees, New York Rangers and New York Knickerbockers games. MSG, which was then owned by Paramount Communications, Inc. ("Paramount"), was part of the basic tier of service offered by Time Warner. Liberty contacted Richard Evans, then President of MSG, who indicated that Liberty could not buy MSG because Time Warner had exclusive distribution rights in the MVPD markets where Liberty and Time Warner competed, and that Time Warner would not relinquish these exclusive "rights".

86. Liberty appealed directly to Paramount's Chief Executive Officer, Martin Davis. Davis personally intervened and Paramount's counsel informed Time Warner that its exclusive distribution arrangement was an unenforceable restraint of trade. Henceforth Paramount sold *MSG* to Liberty. Liberty obtained *MSG* after many months, at great expense and only after its effective entry into the market was retarded. Liberty was only able to win this fight, after significant damage to its market entry, because it had sufficient financial resources and high level connections with the relevant programmer.

87. This complaint chronicles only several of numerous instances where Liberty's business connections, substantial financial and legal resources and its unique level of business integration (Liberty's owners also owned many commercial and residential properties in the MVPD markets) enabled it to partially overcome Time Warner's tactics, albeit at great expense and after significant damage and lengthy delay. There are very few actual or potential alternative MVPDs which can summon such resources. Time Warner ~~was~~ clearly making a point to the potential competitors throughout the United States who were watching this New York battle.

Court TV

88. Time Warner owns a one-third share of *Court TV*. In 1991, Time Warner and *Court TV* entered into a 15 year exclusive distribution arrangement which prevented Liberty from offering this extremely popular network. While it was denying Liberty access to *Court TV*, Time Warner engaged in extensive advertising campaigns which highlighted the availability of *Court TV* exclusively on Time Warner's systems. Liberty was told by numerous potential subscribers that they would have abandoned Time Warner's service but for Liberty's inability to offer *Court TV*.